



The Commonwealth of Massachusetts

Department of State Police

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Mr. Michael Morisy
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Via Email Only

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Re: Your Request for Records

Dear Mr. Morisy:

The Department of State Police (the "Department") is in receipt of your request for the following information:

- All complaints made by state employees to your agency, or a department under your jurisdiction, related to sexual harassment, sexual discrimination or sexual assault since 1/1/2012;
- Any/all summaries of internal investigations of these complaints, and the resolution of those investigations;
- Any/all records of settlements related to these complaints; and
- Reports detailing any/all disciplinary action taken in response to these complaints, including but not limited to actions against the complainant and the subject of the complaint.

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Complaints of Criminal Assault

Please be advised that complaints of criminal misconduct that are reported to the Department—or any policing agency for that matter—both by state employees and/or members of the general public, are exempt from public disclosure under the Massachusetts Public Records Law. G.L. c. 4, § 7, cl. 26 (f). Exemption (f), the investigatory exemption, culls out statements or tips provided by witnesses of crimes directly to law enforcement. Witness statements are collected by law enforcement out of the public view both to preserve the inviolability of evidence in active investigations and to ensure the coming forward of witnesses—as willing participants—in criminal investigations down the road. Providing law enforcement with evidence of criminal conduct and protecting the sanctity of the witness statement is in the best interest of the public, witnesses of crimes and the victims of crimes. Bougas v. Chief of Police of Lexington, 371 Mass. 59 (1976). Therefore all witness statements provided to the Department related to sexual assault are not public record.

In this respect, the Department also asserts that the identity of the complainant and the nature of the complaint is exempt from disclosure under the privacy exemption. G.L. c. 4, § 7, cl. 26 (c). The privacy exemption withholds from the definition of “public records” data relating to specifically named individuals, the disclosure of which may constitute an unwarranted invasion of personal privacy. Allegations of sexual assault are those that contain intimate details of a highly personal nature such that disclosure would result in personal embarrassment to an individual or normal sensibilities. Given the information at stake, the complainant’s privacy interest here outweighs the public’s right to disclosure. See Champa v. Weston Public Schools, 473 Mass. 86, 39 N.E.3d 435 (2015)

Complaints of Sexual Harassment and Discrimination

Enclosed please find General Order ADM-18, which discusses Department policy concerning Unlawful Harassment, Sexual Harassment and Discrimination, and the Department’s Unlawful Harassment, Sexual Harassment, and Discrimination Complaint Form. All sexual harassment and discrimination complaints that are reported internally are handled by the Harassment Investigation Unit (HIU), an independent office organized under the Division of Standards and Training. The unit is responsible for conducting confidential investigations into allegations of sexual harassment and discrimination, and brings complaints to completion either through formal or informal resolution. All inquiries, complaints and investigations received and/or completed by the HIU are not subject to public disclosure under the investigatory and privacy exemptions. G.L. c. 4, §7, cl. 26 (c) and (f).

G.L. c. 4, §7, cl. 26 (c) exempts from public disclosure “personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.” Materials that fall within the first clause of (c) are categorically exempt from public disclosure without the need to consider the impact of disclosure on privacy rights. Personnel records are those that, at a minimum, include any information which is useful in making employment decisions such as employment applications, employee work evaluations, performance assessments, disciplinary

documentation, and promotion, demotion, or termination information. See Wakefield Teachers Ass. V. School Committee of Wakefield, 431 Mass. 792, 798 (2000); Brogan v. School Committee of Westport, 401 Mass. 306, 308 (1987); Pottle v. School Committee of Braintree, 395 Mass. 861, 866 (1985); Prescott Publishing Company v. Registry of Probate for Norfolk County, 395 Mass. 274, 278 (1985); Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 436, n. 15 (1983); Hastings & Sons Publishing Company v. City Treasurer of Lynn, 374 Mass. 812, 818 (1978); Worcester T&G v. Chief of Police of Worcester, 58 Mass. App. Ct. 1 (2003).

All HIU records are personnel records for purposes of the exemption because they relate to internal employee working relationships, they impact Department decision making concerning discipline, position assignments, and other determinations that are made on a case-by-case basis effecting the nature of employment of Department employees. Given the nature and character of these investigation reports, they are personnel records and therefore exempt under G.L. c. 4, § 7, cl. 26 (c).

Second, G.L. c. 4, §7 cl. 26 (f) specifically exempts from public disclosure investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. Exemption (f), in part, serves to encourage individuals to come forward and speak freely with police concerning matters under investigation, and to create initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions. Here, the public release of harassment reports, or even portions, will only serve to discourage employees from making the already difficult decision to file a harassment complaint against a co-worker. Employees who suffer as a result of harassment within the workplace should not have to fear that his or her identity will be publicly disclosed. Please note that, in determining whether the individual can be directly identified, the courts review the documents, not from the vantage point of the public at large, but from those familiar with the individual. See Logan v. Commissioner of Department of Industrial Accidents, 68 Mass.App.Ct. 533, (2007).

Personnel, i.e. Disciplinary Records

Please be advised that disciplinary records are effectively personnel records for purposes of the public records law. AS stated above, under the first clause of exemption (c), personnel records are categorially exempt from public disclosure. While the precise contours of the legislative term “personnel file or information” remains undefined, it includes, at a minimum, employment applications, employee work evaluations, promotion, demotion, or termination information pertaining to a particular employee and disciplinary documentation. Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester, 58 Mass. App. Ct. 1 (2003). Disciplinary records fall squarely within the meaning of “personnel” contemplated by the exemption, therefore your request for reports detailing any and all disciplinary action taken by the Department is not subject to the public records law.

If you have any questions or concerns, or if you wish to discuss this matter further, please do not hesitate to contact my office. If you wish to challenge any aspect of this response, you

may appeal to the Supervisor of Public Records as set forth in 950 C.M.R. 32.08, a copy of which is available at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-source/cmr/>. You may also file a civil action in accordance with M.G.L. c. 66, § 10A.

Thank you for your attention to this matter.

Respectfully,



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Enclosures